



MINUTES

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, JANUARY 11, 2005

HUNTINGTON BEACH CIVIC CENTER

2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:30 P.M. – DINNER IN COUNCIL CHAMBERS CAUCUS ROOM

6:00 P.M. – COUNCIL CHAMBERS

PLEDGE OF ALLEGIANCE – Led by Commissioner Fuhrman

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: *P* *P* *P* *P* *P* *P* *P*
Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Fuhrman

AGENDA APPROVAL

A MOTION WAS MADE BY SCANDURA, SECONDED BY DINGWALL, TO APPROVE THE PLANNING COMMISSION MEETING AGENDA OF JANUARY 11, 2005, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Fuhrman
NOES: None
ABSENT: None
ABSTAIN: None

MOTION PASSED

NOMINATION AND ELECTION OF CHAIR AND VICE CHAIR

A MOTION WAS MADE BY SCANDURA, SECONDED BY LIVENGOOD, TO NOMINATE AND ELECT STEVE RAY AS PLANNING COMMISSION CHAIR, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Fuhrman
NOES: None
ABSENT: None
ABSTAIN: None

MOTION PASSED

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY SCANDURA, TO NOMINATE AND ELECT ROBERT DINGWALL AS PLANNING COMMISSION VICE-CHAIR, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Burnett, Fuhrman
NOES: Dingwall
ABSENT: None
ABSTAIN: None

MOTION PASSED

PLANNING COMMISSION WORKSHOP

1) An Orientation and Information Session on the Role of the Planning Commission and Planning Commissioners - Steve Ray

Chair Ray made a PowerPoint presentation that provided information on the following topics:

- Definition of Planning
- Why Plan? (effective planning/benefits)
- Applicant/Developer's Role
- Planning Department's Role

Commissioner Livengood asked Chair Ray to discuss the roles of Public Works, Fire, Economic Development, etc. Chair Ray stated that staff would be providing relative information later in the meeting.

- Planning Commission's Role
- City Council's Role (makes all policy and legislative decisions for the City)
- Consultant's Role (Agency's, Applicant's)

Staff explained other types of consultants that provide unbiased recommendations to the Planning Commission (PC) and City Council (CC).

2) Open Meetings – Steve Ray

Chair Ray made a PowerPoint presentation that provided information on the following topics:

- Open Meetings and the Brown Act
- Public Notification
- Quorum Guidelines/Violations
- Conflicts of Interest and Ethics
- Public Official Participation Guidelines
- Commission Disclosures
- Violation - Grounds for Appeal
- City Attorney/Ethics Code

Commissioner Scandura identified the website address for the Fair Political Practices Commission (FPPC).

3) Planning Commission Bylaws, Protocols and Meeting Procedures – Steve Ray

Chair Ray made a PowerPoint presentation that provided information on the following topics:

Planning Commission By Laws:

- Title and Membership
- Duties of the Commission
- Officers
- Duties of the Chair and Vice-Chair; Representation When An Item is Appealed to the CC

Commissioner Dwyer asked if the individual addressing an appealed item represents the majority of the Commission. Chair Ray confirmed.

Commissioner Fuhrman asked if a policy on representation was included in the By Laws. Chair Ray explained circumstances behind the Commission being represented by the Chair (majority), or by an appointee (minority)

- Duties of the Secretary
- Advisors
- Meetings (Open, Regular, Special)
- Meetings (Pubic Hearings, Adjournment, Attendance)

Commissioner Fuhrman asked if a majority of members must be present for an item to be heard after 11:00 p.m. Chair Ray confirmed.

Commissioner Livengood explained that members could take future action on items presented during their absence by viewing a videotaped recording of the meeting and reading the staff report material.

Commissioner Burnett asked if a Commission Member is required to attend a meeting wherein they plan to recuse themselves from an item due to a conflict of interest. Chair Ray stated that their presence was not mandatory, but added that the member must notify the Chair of their absence prior to the meeting. Commission Counsel Mulvihill stated the Commissioner should attend to state on the record why the Commission was recusing himself/herself.

- Quorum (4 Commissioners)
- Order of Business
- Parliamentary Procedure (Robert's Rules of Order)
- Changes in By Laws
- Approval by CC

Planning Commission Protocols During Study Sessions and Public Hearings:

Chair Ray made a PowerPoint presentation that provided information on the Rules and Protocol approved by the Commission on August 10, 2004.

Commissioner Livengood identified an error in the language included under Selection of Chair and Vice Chair (what constitutes seniority, vote counts, etc.), and read the correct language included in the Ordinance adopted by the CC.

Meeting Procedures

- Study Session - Discussion of Agenda Order
- Public Hearing Session - Discussion of Agenda Order
- Public Hearing Item Procedure - Discussion of the Public Hearing Portion of the Agenda

4) The Planning Framework - General Plan (GP), Specific Plans, Zoning and Subdivisions – Mary Beth Broeren, Herb Fauland

Mary Beth Broeren provided information related to the GP including purpose, phrases used, and guides to fiscal and physical development in Huntington Beach. The following points of information were discussed:

- Land Use Map - land use compatibility (identified on GP Map Exhibit)
- Text Elements (listed and mandated by State Law)

- GP adoption in 1996 with a projected shelf life of 20 years
- Updated elements since 1996 including housing, coastal, growth management, map amendments, land use designations, text amendments

Chair Ray asked if the housing element would be reviewed during 2005. Ms. Broeren responded no and explained the guidelines for review and the lack of state appropriation funds for analysis.

Herb Fauland presented an overview of Specific Plans, zoning and subdivisions. He identified the League of California Cities Planning Commission Handbook as a useful source of information and referred to specific pages as part of his presentation. He explained what a specific plan is and that the City has adopted 13 specific plans citing four as examples; The Crossings, McDonnell Center, Downtown and Ellis Goldenwest. He noted the success of the administrative site plan review process in recently adopted specific plans and discussed the use of specific plans to address areas with unique or unusual site or geographic elements. He elaborated by highlighting the different types of development in specific plan areas such as the Bella Terra/HB Mall revitalization, the industrial development at Boeing, the equestrian/residential development in the Ellis Goldenwest area, and the residential/commercial/mixed-use plans (hotels, retail, restaurant) in the Downtown. He also noted that the City is processing a specific plan for the Edinger Corridor and discussed future development opportunities that are intended for regional commercial uses.

Mr. Fauland gave a brief overview of zoning and directed the Commission to the City's zoning map on the wall. He described how the city is divided into 20 districts or zones, 13 specific plans, and four overlay zones. He noted the many zoning districts and the development regulations that govern the use of private property, which is contained in the Huntington Beach Zoning and Subdivision Ordinance (HBZSO). He indicating the last comprehensive update of the City's zoning ordinance was completed in 1994.

Mr. Fauland concluded by providing an overview of subdivisions and indicated that Government Code section 66410 commonly referred to as the Subdivision Map Act governs the division of land. He also stated that Title 25 of the HBZSO regulates the process at the local level. He then reviewed some of the maps that are commonly processed by the City.

5) The Planning and Development Process – Herb Fauland

Herb Fauland presented information about the development or entitlement process and referenced the "Typical Development Project Flow Chart" on page 54 of the League Handbook provided to the Commission. He explained the steps involved and also provided an overview of the mandatory processing times or Permit Streamlining Act requirements staff must adhere to as part of the review process. He further explained how the other City departments play a part in the review process, how other boards and committees provide input, and the steps in preparing staff reports and other internal deadlines.

Commissioner Livengood asked Mr. Fauland to identify the types of entitlement the PC reviews and has final approval. Mr. Fauland provided examples of the many quasi-judicial matters along with the legislative matters that are reviewed and recommended to the CC.

Mr. Fauland explained information provided in the Urban Design Guidelines binder, including what constitutes approval by the Design Review Board (DRB) and their role as a recommending body to the PC.

Commissioner Fuhrman asked what happens to applications that are exempt from CEQA guidelines. Mr. Fauland responded that exemptions simply means the project requires no further

CEQA review based on the CEQA Guidelines and a review of the many CEQA exemptions. He also referenced a document available to the Commission as a source of information on CEQA guidelines.

Commissioner Fuhrman asked what type of request requires an environmental assessment prior to hearings by the ZA. Mr. Fauland responded that it varies on the project and a review of the CEQA Guidelines. Mr. Fauland indicated that a further discussion about CEQA is scheduled for this evening and that the specifics may be answered at that time.

Commissioner Fuhrman asked about entitlement progression from lower to higher judicial bodies, and whether or not input is forwarded on with each request. Mr. Fauland explained that minutes and/or a written summary is forwarded as part of the staff report. Ms. Mulvihill pointed out that new hearings are held when an item is forwarded to a higher judicial body. Discussion ensued about the public's assumption that information would be passed on through staff reports; and the appeal process, including fee collection and associated appeal periods for both the City and California Coastal Commission (CCC). Staff stated that appeal fees are identified in the agenda and appeal language is read into the record when the Commission takes formal action.

6) Quasi-Judicial Proceedings, Findings and Nexus – Herb Fauland, Scott Hess

Scott Hess provided a PowerPoint presentation that provided information on the following points:

- Types of Land Use Decisions – Legislative (General Plan Amendment, Zoning Map Amendment, Zoning Text Amendment, Local Coastal Program, Specific Plan)
- Types of Land Use Decisions - Quasi-Judicial (Conditional Use Permit, Variance, Subdivision, Coastal Development Permit, Special Permit)

Commissioner Scandura explained how a project could have 2 or 3 entitlement requests with some actions final and some appealable to the CC.

- Questions to Ask (examples of questions/circumstances that will be identified/discussed within the staff report)
- Findings (facts and required statements that serve as the legal basis for action by the Commission; are there reasons why, legally and factually, the Commission made a conclusion; numerous types of findings depending on the entitlement; caution related to arbitrary or “boiler plate” findings)
- Conditions (provided when staff is recommending approval of a project; types of conditions)

Mr. Hess discussed the importance of providing evidence when identifying an issue or to support a finding. Ms. Mulvihill followed by explaining that if a legal challenge is made to a City action; the court will look to the findings made by the City to support the action.

Chair Ray asked staff to explain the term “nexus.” Ms. Mulvihill and Ms. Broeren explained that based on case law, the term refers to a reasonable relationship between the nature of a project and what a discretionary body imposes or exacts on a project and the proportionality of the exaction to the actual impacts made by projects.

Commissioner Dwyer asked if staff's findings are factual and code based. Staff confirmed.

Commissioner Fuhrman asked if staff or the Commission initiates negotiations with the applicant over issues or conditions of approval. Mr. Hess cited examples of how staff, the applicant, the Commission and interested parties interact to resolve a variety of different issues.

Commissioner Fuhrman asked about limitations related to discrepancies between the applicant's request and staff's recommendation. Mr. Hess explained staff's role in reviewing a request submitted by an applicant and the recommendations made by staff. He noted that all requests are reviewed to minimum development standards, General Plan policies, etc. and that standards not met may require a separate entitlement or variance that may or may not be approved.

7) Environmental Review - Mary Beth Broeren

Mary Beth Broeren referenced the handout titled "The City of Huntington Beach CEQA Processing" and discussed the following points of information:

- Adoption of CEQA Guidelines in 1970
- Guideline compliance by all governmental jurisdictions
- CEQA's function: "inform decision makers what a project entails, identify potential environmental impacts, and minimize the negative impacts of development"
- Resolution on human rights and examples of projects not considered having a significant effect on the environment
- Classes of projects considered exempt (ministerial, categorical, statutory)
- EAC Review - projects not exempt from CEQA; what requires a Negative Declaration (may not have significant effect on environment), or EIR (may have significant effect on environment)
- Processing environmental documentation including advertising, public comment receipt, response to comments, public hearing, decision making body review of final documentation, filing of notice
- Comparison of the EIR/Negative Declaration process

Commissioner Scandura asked for the steps that follow when respective governing bodies do not recommend certification of an EIR or Negative Declaration. Ms. Broeren explained that if such an action occurs, then the respective governing body could not take action on the accompanying requests for entitlement. She also stated that an item could be continued if additional information is requested, citing as an example the Poseidon EIR appeal/request for additional analysis.

Chair Ray asked if the City or applicant prepares the environmental documents. Ms. Broeren responded that the City is the lead agency who hires the EIR consultant and oversees its progress, even if applicant pays for the EIR review and report.

Commissioner Dingwall asked if the applicant was allowed to provide its own EIR. Ms. Broeren responded that the City does not allow the applicant to prepare its own EIR, but they can contribute to the document and technical studies.

Commissioner Dingwall asked how the City handles an item deemed insignificant by CEQA, but opposed by a larger opinion. Ms. Broeren replied that it depends on the scale of the project, explaining that evidence within the EIR must demonstrate significant impact. She also discussed the 45-day review period that allows corrections to be made within the EIR, and if outside evidence differs from what is concluded, the impacts would be subject to another 45-day review period.

Commissioner Livengood cited examples of an EIR section found to be inadequate by the CCC.

Commissioner Fuhrman asked about the City's requirements for responding to public comments. Ms. Broeren replied that the City responds to all comments even though the State requires a written response to agencies only.

Commissioner Fuhrman asked staff to describe a “scoping” meeting. Ms. Broeren explained that scoping meetings are held to allow discussion by interested parties about their concerns.

Commissioner Dwyer asked and staff confirmed that only one EIR has been rejected in the City within the last decade.

Commissioner Dwyer asked for the number of agencies the City uses for EIR completion. Ms. Broeren replied that the City must solicit 3 consulting firms but typically releases a Request For Proposal (RFP) to at least 5.

Commissioner Dingwall asked about remediation details accepted or outlined in the EIR. Ms. Broeren responded that depending on the nature of contamination, regulations and mitigation measures would provide the appropriate course of action. She stated that a draft remediation plan may be included within the EIR, and that standard protocols are in place in the City for oil contaminants.

Commissioner Dingwall called the Best Management Practices (BMPs) insufficient, inferring that some remediation plans may cause future problems. Ms. Broeren discussed the City’s Sport Complex built over a former landfill. She also stated that EIRs must anticipate remediation results or impacts, depending on the level of contamination.

Discussion ensued on examining a project in its entirety. Ms. Broeren stated that CEQA requires impacts on a whole basis, and mitigation measures to address all impacts of remediation. She referred to the environmental checklist (Environmental Factors Potentially Affected) provided on page 3 of the sample environmental document provided to the Commission.

Commissioner Fuhrman asked about comparing areas of specialization among EIR preparation firms i.e. areas, agencies, public versus private, etc. She stated that the City doesn’t discriminate, but that disclosures must be made that may pose a conflict of interest.

Commissioner Fuhrman asked if more initial study questions were available. Ms. Broeren answered that the state requires certain items be addressed, and that the City has just updated the environmental assessment checklist to include additional questions based on County of Orange recommendations regarding water quality.

8) Planning Glossary – Steve Ray

Chair Ray made a PowerPoint presentation that provided definitions included in the Planning Glossary of Terms.

9) Other Agencies Involved in the Development Review Process – Mary Beth Broeren

Mary Beth Broeren discussed agencies listed by category that are involved in the development process:

- Orange County Agencies
- Regional Agencies
- State Agencies
 - Resource
 - State and Consumer Services
 - Transportation
 - Independent Commissions

- Environmental Affairs
- State Water Resources Control Board
- Health and Welfare
- Federal Agencies
- Miscellaneous Agencies
 - School Districts
 - Utilities

10) Planning Commission Committees and Liaison Assignments – Steve Ray

Chair Ray discussed the four advisory boards (Design Review Board, Environmental Board, School District Issues/Council Subcommittee and Subdivision Committee) and requested that Commission Members consider placement on a particular committee and submit a request in order of choice (first, second, third).

Chair Ray also explained that the Edinger Corridor and Nesi Ad-Hoc Committees were removed from the liaison list due to inactivity.

11) Additional Information and Related Discussion – Steve Ray

Commissioner Scandura discussed how the Rules/Protocols ensure that business is conducted in an orderly manner, and that the body respects one another and makes sure issues are separated out and are not considered personal.

Chair Ray thanked Commissioner Livengood and staff for the resource notebook distributed to the Commission. He also thanked staff for the presentation material and discussion provided at the workshop.

PUBLIC COMMENTS

Shirley Doo, Westport Drive, spoke regarding a stop work order on a 6-foot retaining wall setback 3 feet on her property. She distributed information on construction activity, including copies of the retaining wall and signatures from neighbors in support of her property improvements. She discussed the rear yard slope issues and her conversations with staff to resolve the issues.

Staff discussed fence standards and stated that Ms. Doo's request requires a conditional use permit.

PLANNING COMMISSION COMMENTS

Commissioner Dwyer – gave thanks to Council Member Don Hansen for appointing him to the Commission, and to staff for meeting with new Commissioners to provide information, direction and reference material.

Commissioner Scandura – congratulated Commissioner's Ray and Dingwall for being elected as Chair and Vice Chair, welcomed the new Commissioners, and thanked Commission and staff for the workshop.

Commissioner Dingwall - welcomed the new Commissioners and thanked the Commission and staff for the workshop.

Commissioner Ray – welcomed the new Commissioners and thanked staff and Commissioner Livengood for helping put together the workshop and PC Orientation Binder.

Commissioner Livengood – congratulated Commissioner's Ray and Dingwall for their appointments to Chair and Vice Chair, welcomed the new Commissioners, commended Chair Ray for tonight's workshop, and thanked Planning Department and City Clerk staff for their assistance with the PC Orientation Binder.

Commissioner Burnett – gave thanks to Council Member Keith Bohr for appointing her to the Commission, provided compliments to staff for their work behind the scenes, and thanked Commissioner Livengood for putting together the PC Orientation Binder.

Commissioner Fuhrman – gave thanks to Council Member Debbie Cook for appointing him to the Commission, and to staff for meeting with new Commissioners. He also thanked Chair Ray for tonight's workshop and requested clarification on the agendas oral communications and public comments.

Herb Fauland, Principal Planner, reviewed items for the next regularly scheduled meetings of January 25 and February 8, 2005.

Vice Chair Dingwall voiced concerns about timeshares being discussed during Study Session on January 25 and asked about the timelines associated with timeshare entitlement. Staff responded that timeshares are a legislative matter and not subject to state mandated timelines, and that the item is ready for processing. Staff also reminded the Commission that the PC has requested that all zoning text amendments be presented at Study Sessions prior to the public hearing.

ADJOURNMENT:

Adjourned at 10:00 p.m. to the next regularly scheduled meeting of Tuesday, January 25, 2005, Huntington Beach Civic Center.

APPROVED BY:

Howard Zelefsky, Secretary

Steve Ray, Chair